

IT IS SO ORDERED.

Dated: November 21, 2006
04:11:32 PM


Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

HARRY D. SUMMERS,

Debtor.

CASE NUMBER 06-40982

HONORABLE KAY WOODS

ORDER DENYING TRUSTEE'S MOTION TO DISMISS AND
FINDING THAT CASE WAS NOT AUTOMATICALLY DISMISSED

This cause is before the Court on Motion to Dismiss Case Pursuant to 11 U.S.C. § 521(i) or in the Alternative for Relief Pursuant to 11 U.S.C. § 105; or Rule 9024(b)(6) ("Motion to Dismiss") filed by Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"). A hearing on the Motion to Dismiss was held on November 16, 2006, at which Trustee and counsel for Debtor Harry D. Summers ("Debtor") appeared and presented argument.

The facts of this case are straight-forward, but how to deal with this case is not clear. Debtor filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on July 6, 2006. On

the petition date, Debtor did not file schedules of assets and liabilities, statement of financial affairs or certain other information required to be filed pursuant to 11 U.S.C. § 521(a)(1) (the "Required Information"). On July 22, 2006, Debtor filed Motion for Extension of Time to File Chapter 13 Schedules, Statement of Financial Affairs and Plan of Reorganization and other required Information ("Motion to Extend Time"), which was granted on July 25, 2006. As a consequence, Debtor was permitted to file the Required Information on or before August 4, 2006. Debtor did not seek any further extension of time to file the Required Information. On September 2, 2006, Debtor filed Schedules A-J, Statement of Financial Affairs, Summary of Schedules, Means Test and Notice to Individual Consumer Debtor Under Section 342(b), as well as the Chapter 13 Plan. As a consequence, all of the Required Information has now been filed.

The meeting of creditors pursuant to § 341 of the Bankruptcy Code was held on October 11, 2006. Debtor has been making payments to Trustee pursuant to the terms of the Plan.

The question with which this Court wrestles is what is the effect of the "automatic" dismissal in 11 U.S.C. § 521(i)? The positions of the parties at the hearing make clear that this provision of the Code provides much uncertainty. If a case can be dismissed without an order of the Court, how are the parties to proceed? Debtor's counsel acknowledged that the Required Information was not timely filed. He further acknowledged that he should have sought an additional extension of time to file the Required Information. Despite these failures, however, Debtor has now filed all information required by § 521(a)(1). Debtor's

counsel represented that, if the Court were to enter an order dismissing the case, he would move to vacate the order. However, absent entry of an order of dismissal, he stated that he was at a loss to know how to proceed.

The Motion to Dismiss seeks alternative relief. In lieu of dismissal, Trustee asks this Court to (i) enter an order finding that the case has not been automatically dismissed or (ii) vacate such automatic dismissal, if the Court finds that the case has been automatically dismissed. At the hearing on the Motion to Dismiss, Trustee stated that the purpose of filing the Motion was to provide certainty about whether the case had been automatically dismissed. Trustee stated that he did not want to see Debtor fully perform pursuant to the Plan and subsequently face the issue of dismissal. Trustee represented that Debtor was making payments under the plan and that the plan could be confirmed.

At the hearing, this Court found that no creditor had been prejudiced by Debtor's late filing of the Required Information.

This Court is not the first to be faced with the effect of automatic dismissal and the uncertainty that it creates. In a case very similar to the instant case, Judge A. Jay Cristol expressed his frustration in a whimsical poem in *In re Riddle*, 344 B.R. 702 (Bankr. S.D. Fla. 2006).

I do not like dismissal automatic,
It seems to be to be traumatic.
I do not like it in this case,
I do not like it any place.

* * *

The poor trustee cannot know
the docket does not dismissal show.
What's a poor trustee to do --
except perhaps to say, "Boo hoo!"

And if the case goes on as normal
and debtor gets a discharge formal,
what if a year later some fanatic
claims the case was dismissed automatic?

Id. at 703.

In *Riddle*, the information required by 11 U.S.C. § 521(a)(1) was filed after expiration of the 45 day period following filing of the petition. The court reviewed the docket and believed the information filed by the debtors to be complete. None of the debtors' creditors filed a request for an order dismissing the case pursuant to 11 U.S.C. § 521(i)(2). Judge Cristol went on to hold that the *Riddle* case was (emphatically) not dismissed automatically although the court provided any party in interest 20 days to move for reconsideration if such party had reason to contest the court's finding that debtors had filed all required information.

In the instant case, Trustee expressed the same reservations as Judge Cristol about the possible effect of an automatic dismissal after a plan has been fully performed. The uncertainty attendant in such a situation is untenable for both Debtor and Trustee. This Court concurs with Judge Cristol's expression of confusion about the effect of § 521(i).

In *In re Jackson*, 348 B.R. 487 (Bankr. S.D. Iowa 2006), Judge Lee M. Jackwig granted a motion for relief from an entry deeming the debtors' bankruptcy case automatically dismissed. Judge Jackwig held that because no party had requested entry of the order of dismissal, the court should not have entered a *sua sponte* order deeming the noncompliant case automatically dismissed. Judge Jackwig declined to continue the court's prior practice of issuing *sua sponte* orders of dismissal. He went on to say that because

Congress did not amend the "unless the court orders otherwise" language in § 521(a)(1), "this Court does not read the familiar language that now appears in section 521(a)(1)(B) to mean a court is prohibited from 'ordering otherwise' once a case reaches the 46th day after the date of the filing of the petition." *Id.* at 499.

In the instant case, this Court follows the *Jackson* court and holds that it is not prohibited from "ordering otherwise" that Debtor's case was not dismissed on the 46th day after the petition was filed. Alternatively, to the extent a court of appeals may construe the statute to have automatically dismissed the case on the 46th day, this Court hereby vacates such dismissal and reinstates the case as if it had not been dismissed. The Court denies Trustee's request for dismissal, but grants the alternative relief in the Motion to Dismiss.

###